IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

KATHERINE A. BLOSSOM, Appellant, Respondent-Below, v. MICHAEL SHAHAN, Director of DELAWARE DIVISION OF MOTOR VEHICLES, DEPARTMENT OF TRANSPORATION, Appellee, Petitioner-Below.	)	C.A. No. 2005-04-187

Submitted: September 23, 2005
Decided: June 29, 2006

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APPEAL FROM DIVISION OF MOTOR VEHICLES' PROBABLE CAUSE DETERMINATION HEARING

This is an appeal from a decision of the Division of Motor Vehicles ("DMV"). On March 24, 2005 the DMV administrative hearing officer found probable cause that petitioner-below appellant, Katherine A. Blossom (hereinafter "Blossom"), violated 21 *Del. C.* § 4177 and suspended her license, pursuant to 21 Del. C. § 2742(c)(d). On April 8, 2005, Blossom moved for a stay of the order revoking her license, which this Court denied on April 13, 2005. Blossom

filed a motion for reconsideration on April 25, 2005, and by an, order dated May 10, 2005, this Court granted a stay of the DMV order revoking the appellant's license.

Blossom was arrested on December 31, 2004 for driving under the influence of alcohol in violation of 21 *Del. C.* § 4177(a). She requested an administrative hearing on the proposed revocation of her driver's license, pursuant to 21 *Del. C.* §2742(f). That hearing was held on March 1, 2005 and a ruling was issued on March 24, 2005 revoking her license. Blossom then filed an appeal of that decision on April 7, 2005. This is the Court's decision.

FACTS

Approximately 1:00am on December 31, 2004, Sgt. Mark DiJiacomo (hereinafter "Officer DiJiacomo") of the Delaware State Police saw a vehicle cross Harvey Road from a side street and enter Washington Avenue in Claymont, Delaware. He turned, followed the vehicle, and observed it traveling in the middle of Washington Avenue. The vehicle made a right turn onto Green Street, without signaling, and continued to drive in the middle of Green Street. Officer DiJiacomo activated his emergency signal and the vehicle pulled to the right of the road. The Officer testified the vehicle "moved a little, like a jumping motion" before stopping.

When the Officer approached the vehicle he requested Blossom's license and vehicle registration. Blossom produced her license; however, despite holding her registration in her hand, she stated that she could not find the document. Officer DiJiacomo observed Blossom's eyes bloodshot and glassy, her face was flushed, and there was a strong odor alcoholic beverage coming from her breath. When asked if she had been drinking, Blossom stated that she had been drinking "all evening" because she had a bad week at work. Blossom stated she had consumed five, maybe six beers. She also stated that she took the back roads home because of her impaired condition and was almost home.

Officer DiJiacomo asked Blossom to step out of her vehicle in order to perform field sobriety tests, to which she consented. Officer DiJiacomo testified he is not certified by the National Highway Traffic Safety Administration ("NHTSA") to administer field coordination tests. He requested Blossom perform the one-leg stand, the walk-and-turn, and the finger-to-nose tests which are standardized NHTSA tests. There were deviations from NHTSA guidelines and standards in administering the field tests, including the Officer's failure to demonstrate the field tests before having Blossom perform such tests. (Transcript page 6)

The first test administered was the "Alphabet Test" where the Officer asked Blossom to recite the alphabet from "A to Z". The appellant correctly recited the alphabet, but the Officer testified she did so slowly, with hesitation, and "slurred her letters together." (Transcript page 6)

Officer DiJiacomo then instructed Blossom to stand on one leg, whichever she felt comfortable, for a period of twelve seconds, and he would count out the twelve seconds. During the test, the Officer testified Blossom raised her foot high, then low, and high again. She also raised her arms and was swaying during the test. (Transcript page 6)

The third test Blossom was asked to perform was the walk-and-turn test for which the Officer had to give Blossom verbal directions three times. During the test Blossom did nine steps forward and only two back, missed heel-to-toe and stepped off the line on the third and other steps. The officer provided no information regarding the gap between the Blossom's heel and toe on the steps noted missed in the AIR report.

Finally, Officer DiJiacomo administered the finger-to-nose test and testified Blossom "touched the first joint of her finger to the tip of her nose", rather than with the tip of her finger. (Transcript page 7) On the AIR report he checked two boxes, one that Blossom "completed" and the other that she "completely missed" that test; but, the Officer testified at the DMV hearing

that he marked the wrong box and was "confident" that the appellant completely missed the finger-to-nose test. A Portable Breathalyzer Test ("PBT") was administered and the Officer testified that she failed; however, the Officer admitted during testimony that he did not know when the unit was last calibrated. Blossom was read her *Miranda* warnings and arrested for driving under the influence in violation of 21 *Del. C.* § 4177.

STANDARD OF REVIEW

The standard of review of an appeal from an administrative decision of the Division of Motor Vehicles is on the record and, as such, is limited to correcting errors of law and determining whether substantial evidence exists to support the hearing officer's factual findings and conclusions of law. *Shahan v. Landing*, Del. Supr., 632 A.2d 1357 (1994). Therefore, the decision will stand unless the Court finds the hearing officer's findings are not supported by substantial evidence in the record or are "not the product of an orderly and logical deductive process." *Quaker Hill Place v. State Human Relations*, 498 A.2d 175 (Del. Super. 1985).

OPINION

In this appeal, Blossom first contends the DMV hearing officer's conclusion should be reversed because the police officer did not have a reasonable articulable suspicion to stop her vehicle. An officer may stop a vehicle where there is a reasonable and articulable suspicion that the driver of the vehicle, or the vehicle itself, is in violation of the law. *DE v. Prouse*, 440 U.S. 649 (1979). Evidence sufficient to determine whether the police officer has reasonable articulable suspicion to justify stopping a vehicle is less than required for probable cause. *Downs v. State*, 570 A.2d 1142 (Del. Supr. 1990). The officer need only point to specific and articulable

facts which when taken together with rational inferences from these facts, reasonably warrants the intrusion. *State v. Powell*, 2002 WL 1308368 (Del. Super 2002).

The record indicates Officer DiJiacomo observed Blossom driving in the middle of two streets and turned right without signaling. In *State v. Huss*, 1993 WL 603365 (Del.Super.) Gebelein, J. the Superior Court concluded there was a reasonable articulable suspicion to stop a motor vehicle where the driver changed lanes without signaling. I fail to see any reasonable distinction between a change of lane and a turn when a signal is required. In fact, I think there is more of a basis to stop for a failure to signal on a turn than where a lane change occurs. In addition, the Officer observed Blossom traveling in the middle of the road and was aware of the neighbor's complaints of impaired driving in the area. When these facts are considered collectively, there was sufficient basis for the officer to stop Blossom's vehicle. Thus, the facts in the record are sufficient to support the hearing officer's determination that there was reasonable articulable suspicion to stop Blossom's vehicle.

Blossom also argues there was no basis for the officer to administer the field tests. The United States Supreme Court has held that an investigatory stop is short of an arrest and is constitutionally valid if based upon a "reasonable articulable suspicion" of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21-30 (1968). It has been held in Delaware that a detention of an individual for the purpose of conducting a field sobriety test is analogous to a Terry investigatory stop. Consequently, the administration of a field sobriety test, resulting from a reasonable and articulable suspicion of a violation of 21 *Del. C. § 4177,* constitutes an investigatory stop and not a "full search" in the constitutional sense. *Pike v. Shahan*, 2002 WL 31999372 (Del.Com.Pl.). "[I]n order to detain someone to administer field sobriety tests, an officer need only possess reasonable articulable suspicion of criminal activity. " *State v. Quinn*, 1995 LS 412355

(Del.Super. 1995) (Erratic driving, glassy and bloodshot eyes, mumbles and slurred speech constituted reasonable and articulable suspicion).

Next, Blossom contends the Officer lacked probable cause to take her into custody for violation of 21 *Del. C.* § 4177, because it was based on statements while she was in custody prior to the *Miranda* warning, and from the field tests were improperly administered. Despite the Officer stating that he believed the appellant to be in "custody" at the time he stopped her vehicle and she performed the field tests, this is not controlling. Delaware case law establishes that traffic stops do not rise to the level which require *Miranda,* but are akin to "*Terry* stops," thus only requiring reasonable articulable suspicion.

In the instant case, Blossom was stopped, and while conducting the initial traffic stop, Officer DiJiacomo observed that Blossom's eyes were glassy, her face was flushed, and her behavior was awkward when presenting her license and registration. Furthermore, the appellant admitted consuming alcohol prior to being stopped. These observations in conjunction with Blossom's admissions gave rise to probable cause, when considered with her performance on the field sobriety tests.

The administration of the field tests and officer observations were admissible and properly relied upon by the hearing officer in his decision to revoke the appellant's driver's license. However, the hearing officer's decision was not solely based on the "field tests" administered by the Officer. The appellant argues that the officer's observation and conclusions on the field test should not be given "much weight" because Officer DiJiacomo is not NHTSA certified and that the field tests may have been flawed. Blossom's performance on the field tests provided information from which Officer DiJiacomo and the DMV administrative officer properly took into consideration in determining whether Blossom was impaired. Under the

totality of the circumstances, there is sufficient evidence in the record to support the hearing officer's conclusion that Blossom was driving under the influence of alcohol.

Therefore, the DMV hearing officer's determination that there was a reasonable articulable suspicion to stop the appellant's vehicle and probable cause that she was in violation of 21 *Del. C.* § 4177 is Affirmed. The order staying the revocation is vacated.

SO ORDERED this 29th day of June, 2006

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Alex J. Smalls
Chief Judge